



**Agenda Item No. 10f.**

**Staff Report**

**Date:** February 9, 2023  
**To:** Mayor Kuhl and Councilmembers  
**From:** Benjamin Stock, Town Attorney  
**Subject:** Information related to remote participation in public meetings after February 28, 2023

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**Recommendation**

It is recommended that the Town Council receive information related to remote participation in public meetings after February 28, 2023.

**Background**

Since October 2021, the Town Council and Town committees and commissions have relied on AB 361 to hold fully remote or hybrid meetings. AB 361 is set to expire in January 2024; however, in practical terms, AB 361 cannot be relied upon without a proclaimed State of Emergency. Governor Newsom has announced that the proclaimed State of Emergency will end on February 28, 2023.

With the expiration of the State of Emergency, the Town Council and Town committees will be required to hold meetings in-person beginning in March 2023. For Town Council and Advisory Design Review (ADR) only, members may participate remotely if they comply with the Brown Act. In addition to the standard options (also known as the “old” rules), the Act now includes two new options for remote participation, which are summarized for your reference in Attachment 1. For Town Council and Advisory Design Review, members of the public may participate in-person or via Zoom.

**DISCUSSION**

The Brown Act includes traditional teleconferencing rules and new provisions adopted under AB 2449. Although the Act gives members of legislative bodies the option to participate remotely, utilizing these provisions will require members to plan ahead and to work closely with staff to comply with the statutory requirements.

A. Traditional Teleconferencing Rules

Anyone participating remotely under traditional teleconferencing rules must include their remote location on the publicly-posted agenda, post the agenda at the specified location, and be prepared to make that location open to the public. This will require members to provide the address of their remote location to the Town Clerk well in advance of the meeting, so that staff can include the address on the notice and agenda for the meeting. The member must also post the agenda at their remote location. Aside from these agenda-related requirements, there are very few limits under traditional Brown Act rules related to remote participation. A quorum of the members must participate from locations within Ross, but they need not participate from a single location. Nor are there limitations on the permitted reasons for remote participation or the number of times per year that a member may participate remotely.

B. AB 2449 Rules

In contrast, while remote participation by legislative body members under AB 2449 does not require the address of a remote location to be included on the agenda, the agenda to be posted at the location or the location to be open to the public, it comes with more onerous requirements for the legislative body member than traditional teleconferencing rules. Specifically, if any member relies on AB 2449 to participate remotely, the member may only do so if a quorum of the Town Council participates in-person from a single location in Ross. In addition, remote participation is only permitted where there is “Just Cause” or an “Emergency Circumstance” as defined by the Act.

1. Just Cause – A member may participate remotely under one of the “just cause” provisions listed below. To do so, the member must notify the legislative body at the earliest possible opportunity of their need to participate remotely and provide a general description of the reason for this need. Only the following four circumstances are acceptable as “just cause” for remote participation:

- a) childcare or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely;
- b) a contagious illness that prevents a member from attending in person;
- c) a need related to a physical or mental disability; or
- d) travel while on business of the legislative body or another state or local agency.

2. Emergency Circumstances – A member may participate remotely if they have a physical or family medical emergency that prevents a member from attending in person. To do so, the member must request that the legislative body allow them to participate in the meeting remotely because of emergency circumstances and the legislative body must take action to approve the request. This request should either be listed on the agenda or if it is not on the agenda, the legislative body may act on the request at the beginning of the meeting by majority vote.

Before acting on an emergency circumstance request, the legislative body must request a general description of the circumstances relating to the member's need to appear remotely. The Act specifies that the description cannot exceed 20 words and the member does not have to disclose any personal medical information.

Beyond the limitation on qualifying reasons for participating remotely, AB 2449 also limits the number of times a member can participate remotely and requires that members utilize hybrid technology. Additionally, a member participating remotely shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

#### **Fiscal Impact**

The FYE 23 budget includes funding that enables Town Council and ADR meetings to be video recorded and for members of the public to view and participate in the meetings remotely via Zoom software. No additional appropriation is required.

#### **CEQA and Climate Action Plan Consistency**

The Town Council's review of information related to remote meeting participation is not a "project" under the California Environmental Quality Act, because it does not involve an activity which has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Pub. Res. Code § 21065).

#### **Attachments**

- Remote Meeting Participation Under the Brown Act

# **ATTACHMENT 1**

<b><u>REMOTE MEETING PARTICIPATION UNDER THE BROWN ACT</u></b> <b><u>(After Proclaimed State of Emergency is Lifted)</u></b>		
	<b><u>Traditional Brown Act</u></b> <b><u>Teleconference Rules</u></b>	<b><u>AB 2449</u></b>
<b>Expiration</b>	None	01/01/2026
<b>Quorum</b>	Quorum must meet from locations within Town boundaries	Quorum must meet in-person from single physical location open to public
<b>Notice &amp; Agenda</b>	Notice and agenda must identify each physical teleconference location	Notice and agenda must identify a single publicly-accessible physical location where quorum will meet  Notice and agenda must include remote meeting link & procedure for receiving & resolving requests for accommodation
<b>Public Access</b>	Must provide public access to each teleconference location  Must provide public the opportunity to address the body from each teleconference location	Must provide public access to the single physical location where quorum will meet  Must provide public with remote access through two-way audiovisual platform or telephonic service & live webcasting of meeting
<b>Votes</b>	All votes must be by rollcall	All votes must be by rollcall
<b>Remote Participation by Member of Body</b>	OK for any member, for any reason, for any number of meetings, without Council action.	Only permitted if:  <b>Just Cause</b> - (childcare; contagious illness; physical/mental disability; travel while on official business of body/state or local agency) - Member may utilize only 2x/year - Member must provide a general description of the circumstances relating to their need to appear remotely at the given meeting

		<p><b>Or</b></p> <p><b>Emergency Circumstances -</b> (physical/family medical emergency)</p> <ul style="list-style-type: none"><li>- Requires a separate request to the body for each remote meeting &amp; body must act on the request</li><li>- The body must request a general description of the circumstances relating to the member's need to appear remotely at the given meeting</li></ul> <p><b>And</b></p> <p>Member must adhere to the following requirements to participate remotely:</p> <ul style="list-style-type: none"><li>- Must disclose if a person 18 years or older is present in room + member's relationship w/individual</li><li>- Must participate through both audio &amp; visual technology (not only by phone)</li><li>- A member may not participate remotely more than 3 consecutive months or 20% of the regular meetings for the local agency within a calendar year (~4 Council meetings).</li></ul>
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